

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN W. RUSSELL, JR.,

Petitioner,

v.

NATHANIEL QUARTERMAN,

Respondent.

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CIVIL ACTION No. H-05-4135

MEMORANDUM OPINION AND ORDER

Petitioner John W. Russell, Jr., a state inmate proceeding *pro se*, filed this habeas action under 28 U.S.C. § 2254 challenging his disciplinary conviction. On December 9, 2005, the Court ordered respondent to answer. (Docket Entry No. 3.) In the order, the Court advised petitioner as follows:

If the respondent elects to answer by filing a dispositive motion (*i.e.*, a motion to dismiss or for summary judgment) the petitioner shall file any reply within **thirty (30) days** of the date reflected on the certificate of service. If the petitioner fails to comply on time, the Court may dismiss this case for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

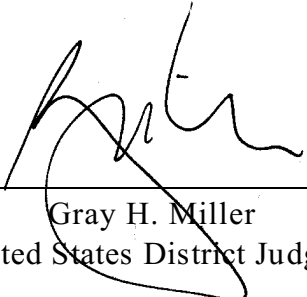
(*Id.*, p. 3, original emphasis.)

On March 27, 2006, respondent filed a motion for summary judgment. (Docket Entry No. 11.) The certificate of service reflects that petitioner was served with a copy of the motion on March 27, 2006. (*Id.*, p. 13.) To-date, petitioner has neither responded to the motion for summary judgment nor requested additional time to respond.

Accordingly, the Court finds that petitioner's failure to file a response to the motion for summary judgment reflects petitioner's lack of due diligence in prosecuting his case. This case is **DISMISSED WITHOUT PREJUDICE** for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on August 14, 2006.



Gray H. Miller
United States District Judge